

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

NEVA JOHNETTE MASTERS,)
Plaintiff,)
v.) Case No. CIV-20-074-Raw-Kew
COMMISSIONER OF THE SOCIAL)
SECURITY ADMINISTRATION,)
Defendant.)

FINDINGS AND RECOMMENDATION

Plaintiff commenced this case on March 13, 2020 with the filing of the Complaint, seeking judicial review of the adverse administrative decision denying benefits. On June 29, 2020, Defendant filed the administrative transcript prompting the entry of a minute order directing Plaintiff to file her opening brief by August 29, 2020. Plaintiff failed to file a brief as ordered. As a result, this Court entered an Order to Show Cause on December 3, 2020 directing Plaintiff to show cause in writing by December 9, 2020 as to why the case should not be dismissed for the failure to prosecute or comply with the Court's orders. The Show Cause Order forewarned that "THE FAILURE TO FILE THE SHOW CAUSE REPORT SHALL RESULT IN THE ENTRY OF A REPORT TO THE PRESIDING UNITED STATES DISTRICT JUDGE RECOMMENDING THAT THIS CASE BE DISMISSED WITHOUT FURTHER NOTICE OR HEARING" (emphasis in original). Plaintiff, however, did not file the show cause report in writing as ordered.

Dismissal for the failure to prosecute is discretionary based upon the circumstances presented. Fed. R. Civ. P. 41(b); United States v. Berney, 713 F.2d 568, 571 (10th Cir. 1983). Dismissal under Rule 41(b) is viewed as an imposition of a sanction. Mobley v. McCormick, 40 F.3d 337, 340 (10th Cir. 1994). In this case, Plaintiff has provided no explanation for his failure to prosecute this action. Consequently, dismissal is appropriate.

IT IS THEREFORE THE RECOMMENDATION OF THIS COURT that this case be **DISMISSED** for Plaintiff's failure to prosecute.

The parties are herewith given fourteen (14) days from the date of the service of these Report and Recommendation to file with the Clerk of the court any objections, with supporting brief. Failure to object to these Findings and Recommendation within fourteen (14) days will preclude appellate review of the judgment of the District Court based on such findings.

IT IS SO ORDERED this 2nd day of June, 2021.



KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE